UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA, *Plaintiff*, v. MICHAEL VILLAGRAN, *Defendant*.	)))))))	 No. 12 CR 94 Hon. Judge Norgle

DEFENDANT VILLAGRAN'S RULE 29 MOTION FOR JUDGMENT OF ACQUITTAL

NOW COMES Defendant Michael Villagran ("Villagran") by and through his attorney, Ralph J. Schindler, Jr., and submits this Motion for Judgment of Acquittal pursuant to Fed. R. Crim. P. 29(c). In furtherance of such motion, Defendant states as follows:

I. INTRODUCTION

On August 15, 2013, after a three (3) day trial, a jury convicted Villagran of one count of Bank Robbery. It is respectfully requested that this Court set aside the guilty verdict and enter a judgment of acquittal because the Government failed to present evidence sufficient to show that Villagran was, in fact, the bank robber.

II. BACKGROUND

At trial the government presented a number of witnesses who testified about a bank robbery. However, not one witness was able to identify Michael Villagran as the individual who had robbed the TCF bank. No fingerprint evidence was presented to indicate that Michael Villagran had ever handled the bank robbery note.

It was clear that Villagran was in the vicinity at the time of the bank robbery. He was arrested while walking down the street several blocks away from the robbery. Yet the only evidence the government presented that he was the bank robber was the following: (1) the fact that Michael Villagran had eight $100 bills on him at the time of his arrest, the same number and denomination of bills taken in the robbery; (2) that Villagran had made a "confession" to an FBI agent following his arrest; (3) that Villagran had made an inculpatory recorded statement while incarcerated at the MCC, and (4) that his shoes matched those of the robber. It is respectfully suggested that the quality and quantity of this evidence was so weak such that, even taking such evidence in the light most favorable to the government, proof beyond a reasonable doubt was lacking and a judgment of acquittal should be granted Mr. Villagran.

III. RULE 29 STANDARD OF REVIEW

In reviewing a challenge to the sufficiency of the evidence in a jury trial, the standard of review requires that evidence be viewed in the light most favorable to the Government in determining whether any rational trier-of-fact could have found essential elements of the charged crime *beyond a reasonable doubt*. *United States v. Monroe*, 73 F.3d 129, 131 (7th Cir. 1995). While a verdict may be rational even if it relies solely on circumstantial evidence (*United States v. Moore*, 572, F.3d 334 (7th Cir. 2009)), the Seventh Circuit has made it clear that there is a line between reasonable and unreasonable inferences and the government "may not prove its case, . . . with 'conjecture camouflaged as evidence.'" *United States v. Terrance Jones*, 713 F.3d 336, 340 (7th Cir. 2013)(quoting *Piaskowski v. Bett,* 256 F.3d 687, 693 (7th Cir. 2001)). The jury's verdict cannot be based on inferences which "fall into the realm of impermissible speculation". *Id.*

IV. ARGUMENT FOR JUDGMENT OF ACQUITTAL

A. The Government Failed to Present Evidence Sufficient to Show that Villagran was the Bank Robber.

The Cash

The Government made much of the fact that Villagran was found with eight $100 bills. Yet the evidence at trial was clear that the serial numbers of the bills taken in the robbery was not recorded. Hundred dollar bills are fairly common in circulation as United States Currency. Subsequent to trial the FBI contacted Mr. Villagran's wife to return some of his property found on him at the time of his arrest. A small amount of cash was included in this return. Thus while Villagran had eight $100 bills on him at the time of his arrest, he actually had $802 or some small amount in excess of $800 on him. The amount of money on Villagran was consistent with his first post arrest statement that his wife had given him $1,200 and that the $800 found on him was Candy's money. To conclude that these eight $100 bills were the same $100 bills taken in the robbery involves pure speculation.

The Statements

Defendant contends that the alleged confessions lacked reliability such that they should have been disregarded by the jury. The second post arrest statement made to the FBI at the Aurora Police station was made several hours after Villagran was held in custody by Aurora police. In his first post arrest statement f around 7:00 p.m. Villagran denied any involvement in the bank robbery and stated that the money found on him came from his wife. Several hours later he was interviewed by FBI Agent Adam Hoogland. Although the FBI agent stated that Villagran admitted in that later statement his alleged role in the robbery, Villagran's "confession" was so incredible as to be unbelievable. His 9:00 p.m. statement involved a revelation of the "demons" in his head—the militia in the van in the parking lot—the robbery note given to him by "Sari" to take in to the bank—that they told him to ask for $800 as a "test"—the whole "confession" was so incredible as to be totally unreliable and should have been disregarded by the jury and this court.

Further, the evidence was clear that Villagran had a history with the Aurora Police Department. He had been indicted and sentenced to a period of imprisonment for kicking an Aurora Police Officer. It is submitted that the change in "confessions" from the 7:00 p.m. statement that he had gotten the money from his wife to the 9:00 p.m. statement to the FBI where he allegedly told them of his involvement is the result of some outside influence. This is suggested by the history of the relationship between Villagran and the Aurora Police Department and this court's own view of Mr. Villagran. Mr. Villagran is not one to voluntarily cooperate with authorities. The credibility of this 9:00 p.m. statement on the day of his arrest is highly suspect.

The court properly instructed the jury as to the weight that should be given to the statement:

> **You must decide whether the defendant actually made the statement and, if so, how much weight to give to the statement. In making these decisions, you should consider all of the evidence, including the defendant's personal characteristics and circumstances under which the statement may have been made.**

It is respectfully submitted that the evidence suggests that no weight should be given to this confession, that the history of the relationship between Villagran and the Aurora Police Department and the nature and history of this defendant's relationship to authority all indicate that such statement should be given no weight. Absent such "confession" the government's case evaporates into thin air.

Likewise, the "confession" involving the recorded conversation from the MCC should not be construed as a "confession". These statements were inconclusive as to being an "admission." In fact, the very transcript presented at trial had Villagran stating that he wasn't involved in any bank robbery. He states: "I didn't plan nothing. I don't know what they talking about"

In summary, it is respectfully submitted that the two alleged confessions should be given no or minimal evidentiary weight. When given such weight it is clear that the government has failed in its burden of "proof beyond a reasonable doubt."

The Shoes

In order to bolster its argument, the government introduced blown up pictures of the bank robber's shoes with some white stripping on the side of the shoe. The government argued that this white stripping was the Nike “Swoosh” symbol which was present on the shoes Defendant wore at the time of his arrest. The court noted that the video pictures from TCF Bank were not of great quality. The enlargement of white markings on the side of the shoe of the robber was not clear. Again, to argue that this white mark on the side of the robber’s shoe was the Nike “Swoosh” symbol present on Mr. Villagran’s shoe involves pure speculation and is not a permissible “inference” that can be drawn from the evidence presented. Nike shoes are one of the most popular brands of tennis shoes. To allow the jury to convict this defendant based on the alleged commonality between defendant’s shoes and the bank robber’s shoes again involves the realm of “impermissible speculation”.

Impossibility based on Time Records

Defendant contends that it was physically impossible for Villagran to have been the bank robber under the evidence the government presented. The custodian of records of TCF bank testified that his video recording equipment is monitored for time accuracy daily. Under the government’s evidence, the time differential between the TCF video of the bank robbery and the time at which Villagran is seen in the Cermak Market is two minutes and 37 seconds. The evidence is clear that the time the Robber left TCF bank was 17:51 or 5:51 p.m. The evidence was clear that a man in a red shirt is seen walking through Cermak Market at 5:53:37 p.m. The government alleges this man is Villagran. During that two minute 37 second gap in the government’s evidence, the Robber would have had to run two blocks to the Cermak Market, take off his pants, take off his jacket, his blue baseball cap, his gloves and deposited all of these within the various hiding locations within Cermak Market. He would then walk in front of the Cermak camera at 5:53:37. The video introduced by the government of the alleged bank robber entering Cermak Market had no time stamp. What time did the real robber enter the Cermak Market? There was no proof of what time he entered. It is respectfully submitted that the alleged transformation of Villagran the bank robber to Villagran the Cermak Market store customer, given the known timing elements, was an impossible physical feat and clearly shows that he could not have been the robber.

V. CONCLUSION

The Seventh Circuit has made it clear that there is a line between reasonable and unreasonable inferences and the government "may not prove its case, . . . with 'conjecture camouflaged as evidence." The court instructed the Jury on the law as follows:

You are allowed to make reasonable inferences, so long as they are based on the evidence.

It is respectfully submitted that there was insufficient evidence upon which to base any reasonable inference. The government's entire case involved "conjecture camouflaged as evidence". It is respectfully submitted that this was one of the weakest cases ever presented before this court. To convict Mr. Villagran on this evidence would be an unjust outcome. While Mr. Villagran is a difficult individual to deal with and an easy target upon whom to place blame, it is submitted that his handicap makes him defenseless against these charges. However, it is respectfully submitted that the Court should set aside the guilty verdict and enter a judgment of acquittal as to Michael Villagran.

Respectfully submitted,
/s/*Ralph J. Schindler, Jr.*
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